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Date of Decision: 18th January 1996

CRIMINAL APPEAL NO. 500 OF 1990

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

and

HONOURABLE MR. JUSTICE H.R. SHELAT

1. Whether Reporters of Local Papers may
be allowed to see the judgment? No

2. To be referred to the Reporter or not?
No

3. Whether their Lordships wish to see
the fair copy of judgment? No

4. Whether this case involves a
substantial question of law as to the
interpretation of the Constitution of
India, 1950 or any order made
thereunder? No

5. Whether it is to be circulated to the
Civil Judge? No

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Shri M.H. Chinoy, Advocate, for the Appellant

Shri S.T. Mehta, Addl. Public Prosecutor, for the Respondent

CORAM: A.N. DIVECHA & H.R. SHELAT, JJ.

(Date: 18th January 1996)

ORAL JUDGMENT (per Divecha, J.)

The judgment and order of conviction and sentence passed
by the learned Additional Sessions Judge of Kheda at Nadiad on
31st May 1990 in Sessions Case No. 167 of 1988 convicting the
appellant herein of the offence punishable under sec. 18 of the
Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS

Act for brief) and also under sec. 66 of the Bombay Prohibition Act, 1949 (the Prohibition Act for brief) and sentencing him to rigorous imprisonment for 10 years and fine of Rs. 1 lakh in default rigorous imprisonment for one year more for the offence punishable under the NDPS Act without passing any separate order of sentence for the offence punishable under the Prohibition Act is under challenge in this appeal at the instance of the original accused.

2. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that, on receipt of prior information while on way to conduct a prohibition raid, the Police Sub-Inspector attached to the police station at Khambolaj raided the house of the appellant in presence of two panch witnesses on 7th October 1987 at about 9.30 a.m. The appellant herein was found in possession of 25 grams of opium. It was seized in presence of the panch witnesses. The appellant was apprehended. The concerned Police Sub-Inspector thereafter filed his complaint with respect to the incident charging the appellant herein with the offence punishable under sections 17, 18 and 22 of the NDPS Act and sec. 65A of the Prohibition Act. The proceeding arising therefrom ultimately came to be registered as Sessions Case No. 167 of 1988 in the Sessions Court of Kheda at Nadiad. It appears to have been assigned to the learned Additional Sessions Judge for trial and disposal. On conclusion of the trial, by his judgment and order passed on 31st May 1990 in the aforesaid sessions case, the learned trial Judge found the appellant herein guilty of the offences punishable under sec. 18 of the NDPS Act and sec. 66A of the Prohibition Act and sentenced him to rigorous imprisonment for 10 years and fine of Rs. 1 lakh in default rigorous imprisonment for one year for the offence punishable under sec. 18 of the NDPS Act without imposing any separate sentence for the offence punishable under sec. 66A of the Prohibition Act. The aggrieved accused has thereupon invoked the appellate jurisdiction of this court by means of this appeal for questioning the correctness of his conviction and sentence.

3. This appeal can be disposed of by pressing into service unexplained inordinate delay of nearly six weeks in sending the muddamal article to the forensic science laboratory for its examination and report. The house of the appellant herein was raided on 7th October 1987. The muddamal article of opium to the tune of 25 grams was seized therefrom and it transpires from the forwarding letter of 17th May 1988 from the forensic science laboratory addressed to the Police Sub-Inspector L.C.B. at Kheda (part of Ex. 17) that it was received by the forensic science laboratory on 19th November 1987. There thus appears to be a delay of about 42 days in sending the muddamal article to the forensic science laboratory for its analysis and report. Such delay of nearly 42 days has not come to be explained by or

on behalf of the prosecution in any manner.

4. In this connection, a reference deserves to be made to the unreported ruling of the Division Bench of this Court in Criminal Appeal No. 50 of 1988 decided on 22nd January 1992. In that case there was unexplained delay of 25 days in sending the muddamal article to the forensic science laboratory for its analysis and report. That delay was found to be fatal to the prosecution case.

5. The aforesaid unreported Division Bench ruling of this Court is on all fours applicable in the present case. In this case also the delay of nearly 42 days in sending the muddamal article to the forensic science laboratory for its analysis and report has remained unexplained.

6. In view of our aforesaid discussion, the impugned judgment and order of conviction and sentence qua the NDPS Act passed by the learned trial Judge cannot be sustained in law. It has to be quashed and set aside.

7. Learned Advocate Shri Chinoy for the appellant has not been able to make any dent in the prosecution case resulting in conviction of the appellant of the offence punishable under sec. 66A of the Prohibition Act. In view of the overwhelming evidence on record, we are disinclined to interfere with the judgment and order of conviction of the appellant thereunder.

8. The learned trial Judge has not awarded any separate sentence to the appellant in respect of his conviction under the Prohibition Act in view of imposition of punishment for the graver offence punishable under the NDPS Act. In view of the small quantity of opium found in the house of the appellant, we think imposition of punishment of rigorous imprisonment for 3 months and fine of Rs. 100 in default simple imprisonment for 15 days would meet the ends of justice.

9. In the result, this appeal is partly accepted. The judgment and order passed by the learned Additional Sessions Judge of Kheda at Nadiad on 31st May 1990 in Sessions Case No. 167 of 1988 convicting the appellant of the offence punishable under sec. 18 of the NDPS Act and sentencing him to rigorous imprisonment for 10 years and fine of Rs. 1 lakh in default rigorous imprisonment for one year is quashed and set aside. The conviction of the appellant under sec. 66A of the Prohibition Act is however maintained. A sentence of rigorous imprisonment for 3 months and fine of Rs. 100 in default simple imprisonment for 15 days is imposed on the appellant. We are told that the appellant has been in jail since the date of his first arrest on 7th October 1987. It is not necessary for him to undergo any fresh term of sentence imposed by us by this

judgment including the imprisonment in default of payment of fine. He is ordered to be set at liberty if no longer required in any other case. The muddamal articles maybe disposed of as directed by the learned trial Judge in his judgment and order.
